



# Americans Speak Freely



Demonstrators protest during a speech by a white supremacist group leader in York, Pennsylvania. In the United States, the best way to combat offensive speech is with more speech.

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**H**ow does a government grant all of its citizens the right to think, believe, pray, write or speak as their conscience dictates, while still maintaining a peaceful society that protects all of its members?

It is easy, in the abstract, to applaud the universal principles of freedom, justice, liberty and equality. These are indeed some of the most noble ideals to which humankind aspires. But all of us who have had the privilege of serving in government know that it is difficult to take these principles

and apply them — really apply them — to governing a country. Every country struggles to translate these principles into policies and legislation. The exact challenge each of us confronts stems from our nation's own particular history and culture. But what binds all free nations together is the fact that we embrace this struggle and seek to make these great principles manifest in how we govern.

It is with this in mind that I want to tell you a little about America's historic struggles

[with liberty, equality and freedom of expression].

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One particular aspect of liberty that has long been at the core of American beliefs since our founding has been the liberty of conscience and belief. Thomas Jefferson, one of our nation's founders, said that "[a]mong the most inestimable of our blessings is that ... of liberty to worship our Creator in the way we think most agreeable to His will." Our first president, George Washington, wrote in a famous letter to a Jewish

congregation ... that religious freedom was a fundamental right that belonged to all people, not a privilege bestowed by one class of people upon another.

Perhaps even most significantly, the Constitution of the United States, the fundamental blueprint for how our nation is governed, grants every citizen the right to worship freely. America is thus committed to the principle that practitioners of Christianity, Judaism, Islam, Buddhism, Hinduism and any other religion must be treated equally under the law and that their right to worship must be protected.

The American Founders, leading a country that was home to a wide diversity of religious beliefs, sought to protect conscience by putting into the First Amendment of the U.S. Constitution a provision forbidding the government from interfering in religious matters, and protecting the free exercise of religion. Similarly, recognizing that a critical aspect of freedom of conscience is the ability to share one's views, both religious and nonreligious, with others, the First Amendment also contains protections for speech, press and assembly, as well as the right to petition the government.

Sometimes the goals of seeking a society that is truly equal for all regardless of color, race, religion, national origin, gender or disability can seem to conflict with the goal of protecting conscience and expression. There will always be those, for example, who use their right to free speech to say reprehensible things to others, creating divisions along racial, ethnic or religious lines.

But, in our experience, the fundamental rights of equality on the one hand and speech and conscience on the other can work side by side. I will describe shortly how protections for free speech and expression coexist with well-defined tools to protect racial, religious or ethnic minorities. In fact, freedom of speech in our historical experience in the United States was critical to the achievement of equality. Civil rights were established in the United States not merely because our Congress passed the Civil Rights Act, although this was very important. But far more important was the fact that every day Americans turned on their radios and televisions and heard the words of Dr. King and other civil rights leaders. Their



Martin Luther King Jr. waves to the crowd at the Lincoln Memorial for his "I Have a Dream" speech. That King's words persuaded U.S. citizens "separate but equal" was not equal illustrates the power of free expression. © AP Photo

words and deeds persuaded many Americans that "separate but equal" is not in fact equal, and that it was time for change. In fact, there were many who thought the words of Dr. King and other civil rights leaders dangerous and sought to ban them as disturbing the peace in communities where majorities of whites wanted to perpetuate racial segregation. This issue went all the way to our Supreme Court, which ruled in the case of *New York Times v. Sullivan* that an official in Alabama could not sue civil rights advocates over an advertisement that made negative statements about the police. Our First Amendment permitted civil rights advocates to speak out, preach freely from church pulpits and march in the streets. Going back further in history, the abolition of slavery

was accelerated by the exhortations of preachers from pulpits and the writings of abolitionist pamphleteers. The rights to vote for women in the U.S. came through tireless agitation and protest.

Free speech can sometimes even serve the cause of equality and harmony when the motive of the speaker is the complete opposite. Despite the long history of racism in America ... our courts have held that the First Amendment permits white supremacists to march through Jewish and African-American neighborhoods wearing offensive symbols that express their hateful beliefs. While some have questioned why this sort of speech should be protected, in the United States we have found almost invariably that public expressions of hateful beliefs draw larger and more powerful expressions of racial and religious equality and harmony. You will see, for example, a march by neo-Nazis that [draws] a dozen or so participants met with a peaceful interfaith vigil of hundreds of counter-demonstrators.

I saw this phenomenon firsthand recently in Murfreesboro, Tennessee. There, a Muslim community that had been worshipping for more than 20 years in cramped office space had raised money and bought property to build a larger, free-standing mosque. When local officials approved the new mosque, there was agitation and protest by many local residents against

it. But the protesters were met with interfaith rallies in support of the mosque. Mosque opponents brought a lawsuit in state court to stop the mosque, but we at the Justice Department brought a federal civil rights lawsuit that paved the way to allow them to move into the mosque in time for Ramadan this past August. The imam of the mosque, Sheikh Ossama Bahloul, received hate mail, but told me that for every negative comment, he has received many more in support. Indeed, the controversy over the mosque led to a lot of good publicity, and Sheikh Ossama has received letters of support and contributions of money for the mosque from people throughout the United States, including many soldiers serving in Afghanistan. I recently attended the mosque's grand opening ceremony and was heartened by the interfaith support of the Catholic archbishop, Protestant Christian preachers, Jewish leaders and many others at the event. As the United Nations Human Rights Council expressed in Resolution 16/18, "the right to freedom of opinion and expression" plays an important role "in strengthening democracy and combating religious intolerance."

Democracy can be a messy business, but just as we believe that the leaders people choose will govern better than any absolute ruler, so too do we believe that the ideas that will emerge through the messy

Anti-Nazi protesters demonstrate against a white supremacist rally in Los Angeles, left, while law enforcement officers protect neo-Nazis demonstrating in Jefferson City, Missouri, right. The U.S. Constitution protects even the most offensive speech from government suppression. © AP Photo/Angela Gaul (Left), AP Photo/The Jefferson City News-Tribune, Kelley McCall (Right)



interchange of ideas will be preferable to ideas dictated and controlled by the government.

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I want to emphasize, however, that the fact that in America we have very high protections for free speech and other free expression does not mean we are powerless to protect racial, religious or ethnic minorities. We are not. First, and foremost, we can — and most assuredly do — punish anyone who uses actual violence to express their hatred. Free speech is not a license to assault or kill or to engage in acts of vandalism.

Second, we can — and most assuredly do — punish threatening conduct. The courts have held that the First Amendment does not allow bigots, in the name of free speech, to terrorize others by

threatening to initiate future violence. Now, not every ugly, bigoted thing that someone says is a threat that is punishable under our laws. To be punishable, the statement must be what the courts call a true threat, a serious threat to commit an unlawful act of violence, as opposed to efforts to annoy or engage in political hyperbole.

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Free speech likewise is not a license to harass or discriminate, and our civil rights laws protect individuals from discrimination and harassment in schools, the workplace, housing and other areas. For example, civil rights laws guarantee non-discrimination in education, and this means being able to learn in an environment free from harassment based on race, religion, gender or ethnicity. ... We have fought for the right of Muslim students in Texas to gather for midday prayer, and Christian students in Pennsylvania to gather for Bible studies, all on the principle that the school had permitted students to gather for nonreligious activities and thus could not discriminate against religious activities. Likewise we won the right for a Muslim girl in Oklahoma to express her faith by wearing a headscarf to school. While the wearing of headscarves in school is typically not controversial in the United States, where a school tries to prevent it, we stand ready to intervene.

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Our enforcement of equality through the civil rights laws [is] thus interwoven with our

protections for freedom of conscience, religion and expression. Each protection strengthens and serves the other. Our laws protect individuals from violence, harassment and discrimination based on race, religion and similar characteristics. But true national harmony cannot exist if people are not protected and ensured equal opportunity. Authentic harmony similarly requires discussion, learning and exchange of ideas.

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Free speech can be messy, it can interject uncertainty, but ultimately it has been our experience that it is an absolute necessity to achieving real national harmony. And just as harmony in music is not achieved when everyone sings the same note, we do not expect everyone to espouse the same ideals. We achieve harmony when we are able to respect our differences — and differences of opinion — and to enforce our laws in consonance with the principles we share.

*The text above is excerpted from Assistant Attorney General Thomas E. Perez's speech before the Conference on the Transformation of Security and Fundamental Rights Legislation in Kuala Lumpur, Malaysia. The full transcript is available on the U.S. Department of Justice website at <http://www.justice.gov/crt/opa/pr/speeches/2013/crt-speech-130116.html>.*



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